

HOUSE BILL No. 1430

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-31.5-2-215; IC 35-50-2.

Synopsis: Criminal enhancements for using firearms in crimes. Permits a court to impose: (1) an additional fixed term of five to 20 years if a person uses a firearm in the commission of a felony; (2) an additional fixed term of up to 20 years if a person possesses a firearm while committing any offense; and (3) a subsequent additional fixed term of five years if the firearm is stolen. Specifies that a court may not impose two sentencing enhancements for possessing and using a firearm, but that the court may impose an additional enhancement if the firearm is stolen. Provides that the sentencing enhancements are nonsuspendible. Repeals an overlapping firearms enhancement provision.

Effective: July 1, 2015.

Lucas

January 14, 2015, read first time and referred to Committee on Courts and Criminal Code.



First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1430

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 35-31.5-2-215, AS ADDED BY P.L.114-2012,
2 SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]: Sec. 215. (a) Except as provided in ~~subsections~~
4 **subsection** (b), ~~and (c)~~, "offense" means a crime. The term does not
5 include an infraction.
6 (b) "Offense", for purposes of IC 35-38-7, has the meaning set forth
7 in IC 35-38-7-3.
8 (c) ~~"Offense", for purposes of IC 35-50-2-11, has the meaning set~~
9 ~~forth in IC 35-50-2-11(b):~~
10 SECTION 2. IC 35-50-2-11, AS AMENDED BY P.L.152-2014,
11 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2015]: Sec. 11. (a) As used in this section, "firearm" has the
13 meaning set forth in IC 35-47-1-5.
14 (b) ~~As used in this section, "offense" means:~~
15 (1) ~~a felony under IC 35-42 that resulted in death or serious bodily~~



1 injury;

2 (2) kidnapping; or

3 (3) criminal confinement as a Level 2 or Level 3 felony.

4 ~~(c)~~ **(b)** The state may seek, on a page separate from the rest of a
5 charging instrument, to have a person who allegedly committed ~~an~~
6 ~~offense~~ **a felony** sentenced to an additional fixed term of imprisonment
7 if the state can show beyond a reasonable doubt that the person
8 knowingly or intentionally used a firearm in the commission of the
9 ~~offense~~ **felony**.

10 **(c)** The state may seek, on a page separate from the rest of a
11 charging instrument, to have a person who allegedly committed an
12 offense sentenced to an additional fixed term of imprisonment if
13 the state can show beyond a reasonable doubt that:

14 **(1)** the person possessed a firearm while committing the
15 offense; and

16 **(2)** the person possessed the firearm at a location other than
17 on real property that the person owns or in which the person
18 has a contractual interest.

19 **(d)** If the state seeks to have a person sentenced to an additional
20 fixed term under subsection (b) or (c), the state may seek to have
21 that person sentenced to a subsequent additional fixed term of
22 imprisonment if, after showing beyond a reasonable doubt the facts
23 necessary to have the person sentenced to an additional fixed term
24 under subsection (b) or (c), the state can show beyond a reasonable
25 doubt that the firearm described in subsection (b) or (c) was stolen.

26 ~~(d)~~ **(e)** If the person was convicted of the offense in a jury trial, the
27 jury shall reconvene to hear evidence in the enhancement hearing. If
28 the trial was to the court, or the judgment was entered on a guilty plea,
29 the court alone shall hear evidence in the enhancement hearing. **If the**
30 **state seeks a subsequent additional enhancement under subsection**
31 **(d), the jury or court shall hear evidence on the subsequent**
32 **additional enhancement under subsection (d) only after:**

33 **(1)** hearing evidence on an additional enhancement under
34 subsection (b) or (c); and

35 **(2)** finding beyond a reasonable doubt the facts necessary to
36 have the person sentenced to an additional fixed term under
37 subsection (b) or (c).

38 ~~(e)~~ **(f)** If the jury (if the hearing is by jury) or the court (if the
39 hearing is to the court alone) finds that the state has proved beyond a
40 reasonable doubt that the person knowingly or intentionally used a
41 firearm in the commission of the ~~offense~~ **felony as described in**
42 **subsection (b)**, the court may sentence the person to an additional



fixed term of imprisonment of between five (5) years and twenty (20) years.

(g) If the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that:

(1) the person possessed a firearm while committing the offense; and

(2) the person possessed the firearm at a location other than on real property that the person owns or in which the person has a contractual interest;

as described in subsection (c), the court may sentence the person to an additional fixed term of imprisonment of not more than twenty (20) years.

(h) If, after finding that the state has proved beyond a reasonable doubt the facts necessary to impose an additional fixed term under subsection (b) or (c), the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the firearm used or possessed under subsection (b) or (c) was stolen, as described in subsection (d), the court may sentence the person to a subsequent additional fixed term of five (5) years.

(i) A court may impose only one (1) additional fixed term under subsections (b) and (c). However, a court may impose a subsequent additional fixed term under subsection (d) and an additional fixed term under subsection (b) or (c). If a court imposes an additional fixed term under subsection (b) or (c), and a subsequent additional fixed term under subsection (d), the subsequent additional term under subsection (d) shall be served consecutively to the additional fixed term under subsection (b) or (c).

(j) An additional fixed term or subsequent additional fixed term under subsection (b), (c), or (d) is nonsuspendible.

SECTION 3. IC 35-50-2-13 IS REPEALED [EFFECTIVE JULY 1, 2015]. Sec. 13. (a) The state may seek, on a page separate from the rest of a charging instrument, to have a person who allegedly committed an offense of dealing in a controlled substance under IC 35-48-4-1 through IC 35-48-4-4 sentenced to an additional fixed term of imprisonment if the state can show beyond a reasonable doubt that the person knowingly or intentionally:

(1) used a firearm; or

(2) possessed a:

(A) handgun in violation of IC 35-47-2-1;

(B) sawed-off shotgun in violation of IC 35-47-5-4.1; or



1 ~~(C)~~ machine gun in violation of IC 35-47-5-8;

2 while committing the offense:

3 (b) If the person was convicted of the offense in a jury trial, the jury
4 shall reconvene to hear evidence in the enhancement hearing. If the
5 trial was to the court, or the judgment was entered on a guilty plea, the
6 court alone shall hear evidence in the enhancement hearing.

7 (c) If the jury (if the hearing is by jury) or the court (if the hearing
8 is to the court alone) finds that the state has proved beyond a
9 reasonable doubt that the person knowingly or intentionally committed
10 an offense as described in subsection (a); the court may sentence the
11 person to an additional fixed term of imprisonment of not more than
12 five ~~(5)~~ years; except as follows:

13 ~~(1)~~ If the firearm is a sawed-off shotgun, the court may sentence
14 the person to an additional fixed term of imprisonment of not
15 more than ten ~~(10)~~ years:

16 ~~(2)~~ If the firearm is a machine gun or is equipped with a firearm
17 silencer or firearm muffler, the court may sentence the person to
18 an additional fixed term of imprisonment of not more than twenty
19 ~~(20)~~ years. The additional sentence under this subdivision is in
20 addition to any additional sentence imposed under section 11 of
21 this chapter for use of a firearm in the commission of an offense:

